STATE OF CALIFORNIA

STATE BOARD OF EQUALIZATION
PROPERTY AND SPECIAL TAXES DEPARTMENT
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November 2, 2007

TO: INTERESTED PARTIES

Enclosed is a copy of Current Legal Digest (CLD) number 2007-7 for your information and review. The annotations included in this CLD are new proposed annotations (underlined) and/or suggested revisions or deletion of existing annotations (indicated by strikeout and underline). After review, please submit any questions, comments, or suggestions for changes *in writing* by **Monday, December 3, 2007**. These may be sent by e-mail using the "Comments Form" on the Board's website (www.boe.ca.gov/proptaxes/cld.htm), fax or mail. Here is the mailing address:

Board of Equalization
County-Assessed Properties Division
ATTN: Annotation Coordinator
P. O Box 942879
Sacramento, CA 94279-0064

Please note, the new annotations and/or suggested revisions of existing annotations contained in the enclosed CLD are *drafts* and may not accurately reflect the Board's official position on certain issues nor reflect the language that will be used in the final annotation, if formally adopted.

CLDs are circulated for 30 days, at which time any questions are addressed and/or suggested modifications taken into consideration. After approval of the final version by the Board's Legal Department, the changes will be posted to the Board's website under "Annotations" (www.boe.ca.gov/proptaxes/annocont.htm). After all proposed changes have been resolved, the CLD will become obsolete and deleted from the website.

This CLD is posted on the Board's website at www.boe.ca.gov/proptaxes/cld.htm. Copies of the backup correspondence are linked to each annotation via the annotation number. If a link does not work, please let us know by using the "Comments Form" on our website (www.boe.ca.gov/proptaxes/cld.htm). If you have any questions, please contact Glenna Schultz at 916-324-5836.

Sincerely,

/s/Edward W. King

Edward W. King
Acting Deputy Director
Property and Special Taxes Department

EWK/grs
Enclosure

PROPERTY AND SPECIAL TAXES DEPARTMENT

PROPERTY TAXES CURRENT LEGAL DIGEST NO. 2007-7

November 2, 2007

200.0000 BASE YEAR VALUE TRANSFER – PRINCIPAL RESIDENCE

200.0008 **Appeal.** If a claimant appeals the denial of his or her claim to the assessment appeals board and the claim is granted, any reduction in assessment made as a result of an appeal to the appeals board applies to the assessment year in which the appeal is taken and prospectively thereafter. C 5/4/2007.

200.0098 **Records.** The claimant has the right to inspect the assessor's appraisal records relating to the determination of the new base year value upon the sale of the original property which resulted in the denial of the base year value transfer under Revenue and Taxation Code section 69.5. The appraisal of the original property is directly related to the assessor's denial of the claimant's base year value transfer claim. C 5/4/2007.

200.0123 **Rescission.** Section 69.5(i)(1) permits a property owner to rescind a claim to transfer the base year value. However, a notice of rescission is only effective if it is filed within either of the two time periods contained in subdivision (i)(2). Under subdivision (i)(2)(A), the notice of rescission must be delivered to the assessor's office before the date the county first issues a refund check or before any property taxes are paid or become delinquent on the new transferred base year value. Alternatively, under subdivision (i)(2)(B), the notice of rescission is effective if it is delivered to the assessor's office within six years after the base year value transfer relief was granted, provided that the replacement property had been vacated as the claimant's principal place of residence within 90 days after the original claim was filed. C 5/31/2007.

220.0000 CHANGE IN OWNERSHIP

220.0267 **Interspousal Transfer.** Husband and wife jointly formed a revocable trust. Husband and wife executed a deed conveying their interest in real property from "community property with right of survivorship" to themselves as the trustees of the trust. Later, husband and wife, as trustees, transferred the property to a corporation in which 51 percent of the voting stock was held in wife's name and 49 percent of the voting stock was held in husband's name.

The transfer of the property to the corporation was a change in ownership pursuant to Revenue and Taxation Code section 61(j), unless husband and wife can provide clear and convincing evidence to establish that their voting shares in the corporation are community property. If the presumption that husband and wife own 49 percent and 51 percent of the corporation, respectively, is not rebutted, the proportional transfer exclusion of section 62(a)(2) will not apply. Also, the interspousal transfer exclusion of section 63 does not apply because the transfer to the corporation was not a transfer between spouses. C 5/31/2007.

220.0529 **Partnership—Deed Presumption.** In order to prove that the property was owned by a partnership, rather than as tenants in common, evidence may be presented to the assessor to rebut the deed presumption under Rule 462.200(b). Evidence such as of the use of a joint checking account for property-related expenses, affidavits from an accountant and former alleged partners, and partnership tax returns may be provided. The evidence

Please note that the new proposed annotations contained in this CLD are drafts and may not accurately reflect the text of the final annotation should show the percentage of ownership interest of each partner in the partnership's capital and profits. Further, in determining whether a partnership is formed, the intention of the parties is the ultimate test. The parties need not designate their relationship as a partnership. The intent of the parties can be deduced from the partnership agreement as well as the surrounding circumstances. If a formal partnership agreement did not exist, the intent to form a partnership must be demonstrated by evidence such as the alleged partners' conduct, transactions, and declarations such as use of a joint checking account and affidavits. Thus, if the assessor is satisfied that the evidence presented provides clear and convincing evidence that the tenants in common were partners, the assessor may find that the property was beneficially owned by the partnership. C 5/4/2007.

220.0594 **Rescission.** Civil Code section 1688 et seq. provides for rescission of contracts, including contracts for the transfer of real property. When a contract for the transfer of real property is rescinded based upon consent of the parties, rescission must be evidenced by a written notice of rescission signed by the parties to the contract, which should be provided to the assessor. At the same time that a rescission occurs, a rescission deed or a re-conveyance of title should also be recorded with the county recorder's office. The provisions of the Civil Code do not require court approval or a court order for rescission to be valid when the parties to the contract mutually agree to rescind. Rescission of a transfer of real property relates back to the formation of a contract and dissolves it as though it had never been made. Thus, once a contract is rescinded by mutual consent, the parties are placed in the same position they were in before the contract was executed. The value of the real property reverts to its previous base year value with appropriate adjustment(s) for inflation. However, in the context of property taxes, rescission has only prospective application; no refund of taxes is available to the parties for the period of time under which a conveyance is treated as a change in ownership, as the conveyance was effective for that period of time. C 5/31/2007.

610.0000 NEWLY CONSTRUCTED PROPERTY

610.0002 **Assessment.** When an improvement is made to an existing house, only the portion of the property that is newly constructed receives a new base year value. C 5/3/2007.

625.0000 PARENT-CHILD TRANSFER

625.0156 **Partnership Dissolution.** Husband (H) and Wife (W) owned a principal residence as community property. H and W transferred the property to a general partnership in which the partnership interests were held by H and W as partners. The partnership agreement did not provide for a continuation of the partnership on the death of a partner. Subsequently, H and W created a revocable living trust. H and W then transferred their respective partnership interests to the trust. Later, W died. Following W's death, the revocable trust became irrevocable (irrevocable trust). H became the sole present beneficiary of the irrevocable trust during his lifetime, and the children of H and W (children) became the remainder beneficiaries. H died. The trust corpus was then distributed to the children.

When W died, the partnership dissolved 90 days after the date of death by operation of law because there was no agreement between H and W that provided for the continuation of the partnership. At that time, H held the real property in the trust indirectly as an individual, not as an interest in a legal entity. Thus, any transfers from the trust that occurred 90 days after W's death were transfers of real property, not partnership interests. When H died, the children became the present beneficial owners of the property held by the irrevocable trust. Since the children were the remainder beneficiaries of the irrevocable trust, the transfers should be treated as coming from H and W (as trustors of the trust). The transfer of the property from the irrevocable trust to the children will qualify for the parent-child exclusion under section 63.1, if all the filing requirements have been met, since it was a transfer of a principal residence from H and W to their children. C 5/16/2007.

625.0235.005 **Trusts—Share and Share Alike.** A trustee who elects to make a non pro rata distribution of trust real property to one beneficiary may equalize the value of the other beneficiaries' interests in the trust assets by encumbering the real property with a loan and distributing the loan proceeds to the other beneficiaries. If the beneficiary of the real property is the trustor's child, then the parent-child exclusion would be applicable to the full extent of the value of the real property provided all other statutory requirements are met. However, a loan made by the beneficiary of the real property rather than the trustee in order to equalize the trust interests would be considered payment for the other beneficiaries' interests in the real property resulting in a transfer between beneficiaries. In that event, the parent-child exclusion would not apply to the interests transferred between beneficiaries. C 8/4/2003; 9/5/2007

625.0235.015 **Trusts—Share and Share Alike.** If a trustee of a trust has the discretion to make non-pro rata distributions of trust property, the trustee is not legally required to distribute equal interest in a residence to each beneficiary so long as the trustee adjusts the distributions that are made so that each beneficiary receives property of equal value. However, the parent-child exclusion will not apply to the percentage ownership interest in the property in excess of a beneficiary's pro rata interest because it was received as a result of a transfer between siblings, not a transfer from a parent to children. Thus, it will be subject to reassessment. C 5/16/2007.

630.0000 PERSONAL PROPERTY

630.0060 **Vehicles – Mounted Equipment.** Under Revenue and Taxation Code section 10751, vehicles subject to registration are assessed the vehicle license fee (VLF) in lieu of ad valorem taxation. New equipment permanently mounted on such vehicles must be reported to the Department of Motor Vehicles (DMV) so that the DMV can adjust the value on which the VLF is based. Such provisions preempt the enrollment of any locally-assessed property taxes on these vehicles. C 5/31/2007.